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European Commission fines AB InBev €200 million for restricting cross-border sales of beer

The European Commission ('EC') has fined AB InBev €200 million for breaching antitrust laws between the period from February 2009 to October 2016. The EC said that AB InBev, the largest beer brewer in the world, abused its dominant position in the Belgian beer market by hindering cheaper imports of its Jupiler beer from the Netherlands to Belgium. The investigation by the EC was initiated in June 2016 and the statement of objections was issued in November 2017.

As per the findings of the EC, AB InBev sold Jupiler to retailers and wholesalers located at certain EU Member States including Netherlands and France. AB InBev deliberately imposed restriction on supermarkets and wholesalers from buying the Jupiler beer at lower prices from the Netherlands and importing it to Belgium. This conduct of AB InBev steered the EC to conclude that higher prices of Jupiler beer were maintained for consumers in Belgium by AB InBev.

The restrictions by AB InBev were carried out through numerous ways like, removing the French translation of mandatory information on the label and changing the designs and size of beer cans in the Netherlands, refuse to sell the products to one retailer unless the retailer agreed to limit its imports of less expensive Jupiler beer from the Netherlands to Belgium, making customer promotions offered to a retailer in the Netherlands conditional upon the retailer not offering the same promotions to its customers in Belgium, and limiting the volume of Jupiler beer supplied to a wholesaler in the Netherlands in order to restrict imports of these products into Belgium.

As a result, on the basis of the aforementioned reasons, the EC imposed a fine on AB InBev. The EC held that AB InBev infringed Article 102 of the Treaty on the Functioning of the European Union (TFEU) which prohibits the abuse of a dominant position which affect trade and prevent or restrict competition. (*Press Release 13.05.2019*)

GVK admits to collusion and agrees to pay millions in fines

The Competition Commission of South Africa ('CCSA') referred to the Competition Tribunal, a consent settlement agreement, entered between GVK-Siya Zama Ltd. ('GVK'), a construction company, and the CCSA. GVK admitted that it colluded with construction companies and, therefore, agreed to pay administrative penalty of 6 038 852.00 Rands.

In February 2008, GVK entered into a collusive agreement with Group Five, another construction company, in a tender issued by the Mediclinic Group. Group Five submitted cover bids, so that GVK could get the tender for the construction of the Cape-Gate Mediclinic Hospital in Brackenfell, Cape Town.

Again, in July 2010, GVK entered into a collusive agreement with Neil Muller Construction Ltd ('NMC') to rig the tender floated for minor alteration and changes in Tygervalley Shopping Mall. Further, in December 2010, GVK entered into another agreement with NMC to submit cover bid in a tender for the construction of a new warehouse and office building project for Akila Trading.

The GVK's anti-competitive conduct had resulted in fixation of price, division of market, bid rigging and collusive tendering in the construction industry and resulted in contravention of the Competition Act. GVK did not apply for any immunity in terms of the Commissions Corporate Leniency Policy. These matters were remainders of the construction cartels investigation which were initiated in 2009 for the bid-rigging and collusion in the construction of the stadium for the 2010 FIFA Soccer World Cup. (*Press Release 28.05.2019*)

CCI orders investigation into 'Android Abuse'

India's anti-trust watchdog, the Competition Commission of India ('CCI') ordered an investigation into Alphabet Inc's unit Google for abuse of dominant position on its android mobile operating system by blocking the rivals. The CCI started looking into the matter which is similar to the one faced by the Google in Europe, which resulted in a fine of \$5 billion. In the European Union ('EU'), regulators said Google forced manufacturers to pre-install Google Search App and Chrome browser on Android devices giving it an unfair advantage. The CCI found merit in the allegations made in the information and ordered to launch a full probe into the matter. The order has not been made public so far.

Earlier in February 2018, the CCI had imposed a penalty of ₹ 136 Crore on Google, for unfair business practices in India related to search results in Google's core product.

The CCI has powers to impose a penalty of upto 10% of the turnover of Google in the last three financial years if it is found to have abused its dominant position. In view of the judicial pronouncement in India, this turnover for penalty has to be only on 'relevant' turnover. (*News Reports dated 11.05.2019*)



Heard at the BAR

Legal news from India and the world

European Commission opens investigation into Telia Company's proposed acquisition of Bonnier Broadcasting

The European Commission ('EC') has opened an in-depth investigation to assess the proposed acquisition of Bonnier Broadcasting Holding AB ('Bonnier') by Telia Company AB ('Telia') under the European Union ('EU') Merger Regulations.

Bonnier is a TV broadcasting company, whereas Telia is a retail TV channels distributor.

The EC is concerned that the merged entity would create a vertically integrated player in the audio-visual industry.

The EC is also concerned of the fact that Bonnier is the owner of many TV channels that are very important for TV distributors to have in their package, namely its free to air, basic pay TV channels, and premium pay TV sports channel. The EC is of the view that the Telia's competitors in TV channels distribution could be shut out from accessing Bonnier Broadcast's specific TV channels that are quintessential for customers. The merged entity could also deny access to TV advertisement space on the free to air and basic pay TV channels to Telia's competitors in the market for retail mobile telecommunication. This could ultimately materialize into higher prices or lower choices for the consumers.

On 12th April 2019, Telia submitted commitments to address the EC's concerns. The EC has found the commitments to be insufficient to clearly dismiss serious doubts as to the compatibility of the transaction with EU Merger Regulations.

The EC's Commissioner Margrethe Vestager said that the aim of the investigation is to ensure that the acquisition will not lead to higher prices or less choice of channels for consumer of Finland and Sweden. *(Press Release 10.05.2019)*

Portuguese Competition Authority conducts dawn raids in the healthcare sector

On 10th May 2019, Portuguese Competition Authority, the Autoridade da Concorrência ('AdC') carried out dawn raids in eight locations of nine entities in the healthcare sector in Lisbon, Porto and Algarve following suspicion of anticompetitive practices that are harmful to consumer freedom and choice.

The raids were carried on for obtaining evidence for anti competitive practices. To safeguard the interest behind the investigation, AdC ordered investigation to be subject to secrecy.

The dawn raids were carried out with the authorization of Department of Criminal Investigation, Lisbon and are being monitored by the Criminal Investigation Division of the Public Security Police of Lisbon.

Since 2017, AdC has carried out 19 search and seizure investigations in 43 facilities, namely, in the sectors of tourist river transport, driving education, distribution, insurance, food industry association and advertising association.

(Press Release 10.05.2019)

Insulation contractor executive pleads guilty to antitrust and fraud charges

The Department of Justice ('DOJ') announced that Michael S. Flynn ('Flynn'), an executive and co-owner of an insulation contractor of Ridgefield, Connecticut, pleaded guilty for his role in multiple schemes to rig bids in violation of the antitrust laws and to engage in criminal fraud. According to court documents, from October 2011 to March 2018, Flynn conspired with other insulation contractors to rig bids and engaged in fraud on contracts for installing insulation around pipes and ducts on construction projects at universities, hospitals, and other public and private

entities in Connecticut, New York, and Massachusetts.

Flynn and his co-conspirators discussed prices and agreed on bids that inflated prices by at least 10%. In order to conceal their actions, the Flynn and his co-conspirators used burner phones and an encrypted disappearing messaging app.

Regarding the use of advance technology for criminal activities, Assistant Attorney General of the DOJ's Antitrust Division said that the DOJ and other law enforcement partners including Federal Bureau of Investigation and Defense Criminal Investigation Services will use every available resource to detect individuals who attempt to hide their criminal conduct by using high-tech encryption apps, burner phones or any other means.

In addition to his guilty plea, Flynn has agreed to pay restitution to the victims and to resolve civil forfeiture cases connected to the criminal charges.

The Anti-trust charges in US carries a maximum penalty of 10 years in prison and a fine of \$1 million for individuals whereas; the fraud conspiracy charge carries a maximum penalty of 20 years in prison and a fine of \$250,000. Both of the fines may be increased to twice the gain made from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine.

(Press Release 01.05.2019)

Director General of CCI completes investigation in Monsanto case

The Competition Commission of India ('CCI') received informations/references against Mahyco Monsanto Biotech Limited ('MMBL'), Monsanto Inc, U.S.A. ('MIU'), Maharashtra Hybrid Seeds Company Private Ltd. ('MAHYCO') and Monsanto Holdings Pvt. Ltd ('MHPL'), collectively referred to as the OP Group, alleging, inter alia, contravention of Sections 3 and 4 of the Competition Act, 2002 ('Act'). The CCI combined the cases due to commonality of issues involved in information and references.

Many Indian seed companies entered into sub-license agreement with MMBL for procuring its Bt. cotton technology at a onetime non-refundable fee of Rs. 50 lakhs and recurring fee called as 'Trait Value'. Noticeably, in the year 2005, the trait value fixed by MMBL was exorbitant and unaffordable and thus, farmers' association approached erstwhile Monopolies and Restrictive Trade Practices Commission ('MRTPC'). Acting on this, the MRTPC directed MMBL to fix a reasonable Trait Value. Later, various state governments in India fixed Trait Value at affordable rates. In light of the above background, the Informants/Referring Parties alleged that the sub-license agreements between MMBL and the seed companies were one-sided, arbitrary and onerous.

The CCI, while determining the Relevant Product Market ('RPM'), compared Bt. cotton technology with traditional use of chemical spray and found Bt. cotton technology is effective and non-polluting, comparatively. With respect to Relevant Geographic Market ('RGM'), the CCI noted that Genetic Engineering Appraisal Committee ('GAEC')-approved suppliers can only provide Bt. cotton technologies in India which shows that conditions of supplying of services are distinctly homogenous in India. Accordingly, the relevant upstream market was taken as 'provision of Bt. cotton technology in India'. Further, the CCI was of the view that there also existed a downstream relevant market i.e. market for 'manufacture and sale of Bt. cotton seeds in India' connected with the upstream relevant market.

As regards the dominance of MMBL, till 2012, 986 hybrids, incorporated with Bt. cotton technology, were sub-licensed by MMBL. Further, the Bt. cotton technology sub-licensed by MMBL was used in more than 99% of the area under Bt. cotton cultivation in India. The CCI also observed that development of Genetically Modified ('GM') technology requires huge cost, rigorous R&D and testing and approvals from GEAC, which takes around 5-7 years, thus, creating significant entry barriers. Therefore, the CCI held that MMBL holds a dominant position in the market. The CCI observed the conditions in sub-licensee agreements were stringent and unfair and termination of agreement by MMBL led to denial of market access. The imposition of conditions for notification coupled with stringent termination conditions not only discouraged the sub-licensees from dealing with the competitors, but also restricted development of alternate Bt. cotton technologies.

The CCI observed that MMBL is dominant in the upstream relevant market. By terminating the sub-license agreements with the Informants/Referring Parties, MMBL used its dominance in the upstream market to protect its presence in the downstream market through MAHYCO and MHPL. On the basis of the aforementioned information, the CCI held that MMBL has contravened Section 4 of the Act. With regard to allegations under Section 3(4), the CCI found the termination conditions to be excessively harsh and unreasonable and the agreements entered by MMBL appeared to be causing AAEC in the Bt. technology market in India. The CCI held that there exists a *prima facie* case of contravention of Sections 3(4) and 4 of the Act. Accordingly, the CCI directed the Director General ('DG') to cause investigation under Section 26(1) of the Act.

As per the news reports, the DG has found the MMBL had abused its dominant position by setting higher Trait Value to extract maximum profits from captive customers. The CCI has asked the Informant and the Referring party to file objections/suggestions to the investigation report of the DG (**Ref. Case 02/2015 & 107/2015 & News Reports dated 22.05.2019**)

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